

DONALD S. CHILDS

IBLA 75-335

Decided March 26, 1975

Appeal from decision of Montana State Office, BLM, cancelling oil and gas lease M-30712.

Vacated.

1. Oil and Gas Leases: Rentals

Where the advance annual rental for an oil and gas lease was timely submitted by a personal check, but the check was erroneously dishonored by the drawee bank, the rental will be held to have been tendered when first received in the proper Bureau of Land Management Office.

APPEARANCES: Donald S. Childs, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Donald S. Childs appeals from a decision dated December 30, 1974, by which the Montana State Office, Bureau of Land Management, canceled his noncompetitive oil and gas lease M-30712.

Childs had been notified December 16, 1974, that his offer for Parcel 275 in the November drawing of simultaneously-filed oil and gas lease offers had been successful and that he was required to pay the first annual rental in the sum of \$100 within 15 days from receipt of the notice. 43 CFR 3112.4-1. His personal check No. 1772 in the amount of \$100, drawn on the Colorado National Bank, Denver, Colorado, was received by BLM on December 18. On December 26, 1974, oil and gas lease M-30712 was executed on behalf of the United States and issued to Childs effective January 1, 1975. Subsequently, on December 30, the subject check was returned unpaid by Colorado National Bank

with the notation "uncollected funds" as the reason for the dishonoring. BLM, by decision of December 30, canceled lease M-30712 for noncompliance with 43 CFR 3103.3-2.

With his appeal, Childs submitted a cashier's check for \$100 and a letter from a Vice President of Colorado National Bank in which it was stated that the original check of Childs had been erroneously returned to BLM because of a malfunction in the Bank's data processing area, and not because of any fault of the drawer [Childs].

A check which a bank has refused to honor is not a tender or payment of annual rental for an oil and gas lease unless refusal to honor the check was the result of a bank error and a bank official corroborates the error. Duncan Miller, 16 IBLA 379 (1974). Where a check timely given to BLM in payment of a required rental is erroneously dishonored by the drawee bank, the payment will be held to have been paid within the prescribed time. See Duncan Miller, 70 I.D. 113 (1963).

In the instant case appellant submitted a check to BLM which should have been paid upon presentation to the drawee bank. But because of a malfunction of the bank's equipment, the check was erroneously dishonored. No fault can be ascribed to appellant.

[1] Where a noncompetitive oil and gas lease has been issued to a successful applicant in a drawing of simultaneously-filed offers and the lessee's personal check in payment of the first year's rental is returned by the drawee bank, BLM properly may cancel the lease, but where a bank official states that the check was dishonored erroneously because of malfunctioning of the bank's equipment, upon resubmission of the rental payment by lessee the cancellation of the lease may be voided. It is correct in this case to recognize the original check submitted by Childs on December 18, 1974, as timely payment of the first year's rental for lease M-30712. Cf. Dale A. Spiegel, 19 IBLA 235 (1975).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded to BLM for appropriate action consistent with the expressions herein.

Douglas E. Henriques
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge

